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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN J. DREFS

Appeal 2016-000675
Application 12/477,733¹
Technology Center 3600

Before, JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final rejection of claims 1–11 and 13–22, which constitute all the claims pending in this application. Claim 12 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellant identifies Accenture Global Services Limited as the real party in interest. Appeal Br. 4.

SUMMARY OF DECISION

We REVERSE; (37 C.F.R. § 41.50(b)).

THE INVENTION

Appellant states the application relates to presenting travel-related offers by a travel reservation system. (Spec. 1).

Claim 1 reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented process for providing a travel-related offer for a travel passenger, comprising:

receiving from an interface of a travel reservation system a request for the travel reservation system to initiate a travel reservation for a passenger, the travel reservation system comprising passenger name records (PNRs) that each correspond to a passenger and store reservation information for the passenger;

in response to receiving the request, initiating a travel reservation process;

in response to receiving the request, transmitting from the travel reservation system a passenger identifier specifying the passenger to a customer feedback module comprising customer profiles which include data related to passengers' satisfaction with past services, wherein the customer feedback module is configured to:

identify a customer profile associated with the passenger identifier;

access passenger satisfaction data associated with the customer profile, wherein the passenger satisfaction data indicates the passenger's amount of satisfaction or

dissatisfaction with a past service provided to the passenger and indicates when the past service occurred;

assign a weight to the passenger satisfaction data based on an amount of difference between a travel reservation for the past service and travel schedule changes to a travel itinerary associated with the past service, wherein greater changes are correlated with greater dissatisfaction; and

generate a travel-related offer based at least in part on the data related to the passenger's amount of satisfaction or dissatisfaction with the past service provided to the passenger, the past service having occurred before the initiation of the travel reservation process, wherein an amount of the travel-related offer is proportional to the passenger's amount of dissatisfaction with the past service and is inversely proportional to a time elapsed since the past service occurred;

modifying content of the travel reservation system to include the generated travel-related offer; and

presenting on the interface the content including the generated travel-related offer, during a time when the travel reservation process occurs.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Webber et al. "Webber"	US 5,331,546	July 19, 1994
Bayer et al "Bayer"	US 2002/0103693 A1	Aug. 1, 2002
Klinkhammer et al. "Klinkhammer"	US 2006/0240891 A1	Oct. 26, 2006
Walker et al. "Walker"	US 7,383,200 B1	June 3, 2008

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“Getting Bumped” published by www.faqs.org on August 17, 2004
 (“Bumped”)

The following rejections are before us for review:

Claims 1–8, 11, 21, and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bayer in view of Webber and Klinkhammer, and further in view of Bumped.

Claims 9 and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bayer in view of Webber and Klinkhammer, and further in view of Bumped and further in view of Official Notice.

Claims 14–20 are rejected under § 103(a) over Bayer in view of Webber and Klinkhammer, and further in view of Bumped and Walker.

ANALYSIS

35 U.S.C. § 103(a) REJECTION

Independent claims 1, 21, and 22 each requires in one form or another:

assign a weight to the passenger satisfaction data based on an amount of difference between a travel reservation for the past service and travel schedule changes to a travel itinerary associated with the past service, wherein greater changes are correlated with greater dissatisfaction; and
generate a travel-related offer based at least in part on the data related to the passenger's amount of satisfaction or dissatisfaction with the

past service provided to the passenger, the past service having occurred before the initiation of the travel reservation process,

wherein an amount of the travel-related offer is proportional to the passenger's amount of dissatisfaction with the past service and is inversely proportional to a time elapsed since the past service occurred;... .

The Examiner found that Bumped discloses this limitation citing to page 4: “(Bumped teaches involuntarily bumped passengers are provided a travel voucher, the travel voucher having an expiration date - once past the expiration date/time elapsed since past service occurred, the value of the travel voucher drops to zero).” (Final Act. 7).

Appellant argues,

Although Bumped goes on to discuss that “[s]ome folks have reported success in getting vouchers extended a month or so before expiration” (Bumped, page 1), simply providing “vouchers” to passengers “willing to be bumped” is very different than “generating a travel related offer” during the reservation process based on claimed factors including “the passenger’s amount of dissatisfaction with the past service” and “a time elapsed since the past service occurred.”

We agree with Appellant. According to Bumped, “[t]here are no rules governing compensation for volunteers – airlines can offer as little or as much as it takes to bid you off the flight. Delta restricts reservations using volunteer bumped vouchers to two days in advance.” Bumped p. 4. Thus, we find no disclosure in Bumped for the claimed rule, “*an amount of the travel-related offer is proportional to the passenger's amount of dissatisfaction with the past service and is inversely proportional to a time*

elapsed since the past service occurred;....” We do not agree with the Examiner that the expiration of a travel voucher in Bumped corresponds to the amount of the travel voucher being *inversely proportional to a time elapsed since the past service occurred* because the former is merely the expiration of a type of currency, and does not relate to an individual’s travel routine.

Thus, we cannot sustain the rejection of independent claims 1, 21, and 22.

Each of claims 9 and 13–20 depends, directly or indirectly, from independent claim 1. The rejections of these dependent claims do not cure the deficiency in the Examiner’s rejection of claim 1. Because we cannot sustain the rejection of independent claim 1, the rejections of claims 9 and 13–20 likewise cannot be sustained.

The following new ground of rejection is entered pursuant to 37 C.F.R. § 41.50(b). Claims 1–11, and 13–22 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claim 1 is representative of the independent claims before us on appeal, which contain similar limitations, and is a method claim of steps, *viz.*

identify a customer profile associated with the passenger identifier;

access passenger satisfaction data associated with the customer profile, wherein the passenger satisfaction data indicates the passenger's amount of satisfaction or dissatisfaction with a past service provided to the passenger and indicates when the past service occurred;

assign a weight to the passenger satisfaction data based on an amount of difference between a travel reservation for the past service and travel schedule changes to a travel itinerary associated with the past service, wherein greater changes are correlated with greater dissatisfaction; and

generate a travel-related offer based at least in part on the data related to the passenger's amount of satisfaction or dissatisfaction with the past service provided to the passenger, the past service having occurred before the initiation of the travel reservation process,

wherein an amount of the travel-related offer is proportional to the passenger's amount of dissatisfaction with the past service and is inversely proportional to a time elapsed since the past service occurred;

Appeal Br. 20.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

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Alice Corp., Pty. Ltd. v CLS Bank Int'l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case's claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is for a process for providing a travel-related offer for a travel passenger. The four steps in claim 1 result in a generated travel-related offer, during a time when the travel reservation process occurs. The Specification at paragraph 22 recites:

If the feedback was negative, the passenger can be presented with a travel-related offer such as a voucher for complimentary drinks or discounted travel for the current travel reservations. Presenting an offer at a time when a reservation process is occurring (instead of at the time of the complaint) may encourage the redemption of the offer, and consequently, engender goodwill toward the airline. If the feedback is positive, the passenger can be presented with travel-related offers that are similar or related to previously completed travel.

Thus, all this evidence shows that claim 1 is directed to anticipating a complaint by presenting an offer before a dissatisfaction occurs so as to engender goodwill to a customer(s). It follows from prior Supreme Court

cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. Like the algorithm in *Gottschalk*, anticipating a complaint by presenting an offer in “an amount... proportional to the passenger’s amount of dissatisfaction” with past service and “inversely proportional to a time elapsed since the past service occurred,” is a mathematical algorithm that utilizes two variables to calculate the award, and that preempts all implementations and uses. Also, the result engenders goodwill which is not only an abstraction, but it is a fundamental economic practice. Also, since the scheme attempts to modify the attitude of a customer and hence behavior, we find that it represents a method of organizing through reward, human behavior. Thus, determining when to engender goodwill in a sales environment is an “abstract idea” beyond the scope of § 101. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2355-1257.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of performing a mathematical algorithm in *Gottschalk* and the concept of anticipating a complaint by presenting an offer through calculation before a dissatisfaction occurs to engender goodwill, at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357. That the claims do not preempt all forms of the abstraction or may be limited to the

abstract idea in the airline transportation setting, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015). Perhaps more to the point, claim 1 does no more than appease an otherwise disgruntled customer in advance of the expected dissatisfaction to protect goodwill. Goodwill is a disembodied concept that is the epitome of abstraction.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to take in data and compute a result from a database amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellant’s method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellant’s method claims simply recite the concept of advising one of how to evaluate some impact measure as performed by a generic computer. The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instructions to apply the abstract idea of anticipating a complaint by presenting an offer before a dissatisfaction occurs to engender goodwill to a person, on a generic computer. Under our precedents, that is not enough to

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transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’

Alice Corp. Pty. Ltd., 134 S. Ct. at 2360 (alterations in original).

The dependent claims add nothing more to the patent eligibility of the independent claims, e.g., transmitting passenger information – claim 2; modifying a profile – claim 4; recognizing a level change based on type or frequency of travel – claim 5.

CONCLUSION OF LAW

We conclude the Examiner did err in rejecting claims 1–11 and 13–22 under 35 U.S.C. § 103.

DECISION

The Examiner’s rejections of claims 1–11 and 13–22 under 35 U.S.C. § 103(a) are reversed.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960

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(August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)).

37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 CFR § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner
- (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED; 37 C.F.R. § 41.50(b)